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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 GREG O. SHULL,

12 Plaintiff,

13 v.

14 OCWEN FINANCIAL SERVICES
15 SRL, LLC , a Florida Corporation,
16 doing business as T. D. SERVICES
COMPANY, and DOES 1 TO 100
INCLUSIVE,

17 Defendants.
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CASE '13CV1545 GPC RBB

VERIFIED COMPLAINT FOR:

- 1) DECLARATORY RELIEF;
- 2) FRAUD;
- 3) VIOLATION OF CALIFORNIA
B & P Code § 17200;
- 4) QUIET TITLE;
- 5) ACCOUNTING;
- 6) INJUNCTIVE RELIEF;
- 7) VIOLATION OF CIVIL
CODE§1572;
- 8) ABUSE OF PROCESS;
- 9) VIOLATION OF THE
ROSENTHAL ACT;
- 10) TO SET ASIDE A DEFECTIVE
AND WRONGFUL
FORECLOSURE;

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STATEMENT OF THE CASE

Plaintiffs, GREG SHULL, an Individual, (Hereinafter referred as “Plaintiff”) allege that Defendants are third-party strangers to a deed of trust and have no ownership interest entitling them to collect payment, declare a default or conduct a “trustee’s” sale. By hiding behind the complexities of the mortgage finance system, Defendants brazenly attempt to dupe Plaintiff (and millions of other homeowners) into believing they have the right to collect on a debt in which OCWEN FINANCIAL SERVICES SRL, LLC has no ownership interest whatsoever. In an attempt to further their fraudulent scheme and create the air of propriety surrounding their debt collection efforts, Defendants have resorted to “papering the file” by fabricating documents, employing individuals who have no authority to or personal knowledge of the facts to which they attest, and falsely representing to Plaintiff and *to the Court* that they have the right to take Plaintiffs’ property away. Not only is Defendants’ conduct a criminal violation of California’s Mortgage Fraud Statute, Cal. Penal Code section 532(f)(a)(4)¹, and an affront to the long-standing property laws, but their reliance on fabricated and forged documents undermines the integrity of the judicial system. Through this action, Plaintiff seeks to stop Defendants’ fraudulent practices, establish a record as to the true holder in due course of the relevant Promissory Note (“Note”) which is NOT any of the Defendants, and determine the status of Defendants’ claims.

JURISDICTION, VENUE

This Court has original jurisdiction over the claims in this action based on 28 U.S.C. §§ 1331, 1343, 2201, 2202, 12 U.S.C. § 2605, 15 U.S.C. § 1692, 42 U.S.C. § 1983 which confer original jurisdiction on federal district courts in suits to address the deprivation of rights secured by federal law.

This Court also has supplemental jurisdiction over the pendant state law claims

¹ Cal. Penal Code section 532(f)(a) provides that “a person commits a mortgage fraud if, with the intent to defraud, the person does any of the following...(4) files or causes to be filed with the recorder of any county in connection with a mortgage loan transaction any document the person knows to contain a deliberate misstatement, misrepresentation, or omission.”

1 because they form a part of the same case or controversy under Article III of the United
2 States Constitution, pursuant to 28 U.S. C. § 1367.

3 This Court has original jurisdiction over the claims in this action based on 28
4 U.S.C. §1332, which confers original jurisdiction on federal district courts in suits
5 between diverse citizens that involve an amount in controversy in excess of \$75,000.00

6 The unlawful conduct, illegal practices, and acts complained of and alleged in
7 this complaint were all committed in the Southern District of California and involved
8 real property located in the Southern District of California. Therefore, venue properly
9 lies in this District, pursuant to 28 U.S.C. § 1391(b).

10 GENERAL ALLEGATIONS

11 1. Plaintiffs are and at all times relevant was, residents of the county of San
12 Diego, State of California and the lawful owner of a parcel of Real Property commonly
13 known as: 1668 Fisherman Drive, Carlsbad, California 92011, County of San Diego.

14 2. Defendant OCWEN FINANCIAL SERVICES SRL, LLC (hereinafter
15 “OCWEN”), is and at all times herein mentioned was conducting ongoing interstate
16 business in the County of San Diego, State of California and on information and belief
17 claims to be a Successor to FIRST GUARANTY FINANCIAL CORPORATION,
18 which provided the financing for Plaintiffs’ loan was evidenced by a Deed of Trust and
19 Promissory Note. At all times relevant they were doing business in the County of San
20 Diego, California.

21 3. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
22 (hereinafter “MERS”), at all times herein mentioned was a Corporation organized in
23 the state of Delaware, and is an unnamed defendant.

24 4. T. D. SERVICE COMPANY (hereinafter “T. D. SERVICE COMPANY”),
25 at all times herein mentioned was a wholly owned subsidiary of OCWEN.

26 5. Plaintiff is ignorant of the true names and capacities of defendants sued
27 herein as DOES 2 through 50, inclusive, and therefore sues these defendants by such
28 fictitious names and all persons unknown claiming any legal or equitable right, title,

1 estate, lien, or interest in the property described in the complaint adverse to Plaintiffs'
2 title, or any cloud on Plaintiffs' title thereto. Plaintiff will amend this complaint to
3 allege their true names and capacities when ascertained.

4 6. Plaintiffs are informed and believe and thereon allege that, at all times
5 herein mentioned each of the defendants sued herein was the agent and employee of
6 each of the remaining defendants. Plaintiffs allege that each and every defendant
7 alleged herein ratified the conduct of each and every other defendant. Plaintiffs further
8 allege that at all times said defendants were was acting within the purpose and scope of
9 such agency and employment. Whenever reference is made in the Complaint to any
10 act of any Defendant(s), that allegation shall mean that each Defendant acted
11 individually and jointly with the other Defendants.

12 7. Any allegation about acts of any corporate or other business Defendant
13 means that the corporation or other business did the acts alleged through its officers,
14 directors, employees, agents and/or representatives while they were acting within the
15 actual or ostensible scope of their authority.

16 8. At all relevant times, each Defendant committed the acts, caused or
17 directed others to commit the acts alleged in the Complaint. Additionally, some or all
18 of the Defendants acted as the agent of the other Defendants, and all of the Defendants
19 acted within the scope of their agency as if acting as an agent of the other.

20 9. At all relevant times, each Defendant knew or realized that the other
21 Defendants were engaging in or planned to engage in the violations of law alleged in
22 this complaint. Knowing or realizing that the other Defendants were engaged in or
23 planning to engage in unlawful conduct, each Defendant nevertheless facilitated the
24 commission of those unlawful acts. Each Defendant intended to and did encourage,
25 facilitate, or assist in the commission of the unlawful acts, and thereby aided and
26 abetted the other Defendants in the unlawful conduct.

27 INTRODUCTION

28 10. During the Mortgage Boom Era of 2002 to 2007, Wall Street investors

1 looked to feed their insatiable and reckless greed for profit by tapping directly into the
2 American Dream – home ownership. Mortgage lenders and investment banks
3 aggressively lured the American people into predatory loans with teaser interest rates
4 and into purchasing homes with inflated appraisals and under the promise that the
5 booming real estate market would continue to boom. Wall Street took the soon to be
6 toxic loans and bundled them into “Mortgage Backed Securities” through a process
7 known as “Securitization”. These “securities” were then sold to investors in the form of
8 certificates, whereby the investors became the “Certificate holders” of the securities
9 that were to be fed by the toxic loans.

10 11. Knowing that the predatory loans would soon default and turn into toxic
11 assets, Wall Street placed their bets accordingly and bought exotic insurance products
12 in the form of “Credit default Swaps.” Thus, when the Mortgage Boom turned into a
13 Mortgage Meltdown (which it did), they would stand to make even more profit when
14 the mortgage insurance paid them out for their “losses.”

15 12. However, in their rush to “securitize” the predatory loans, Wall Street
16 failed to actually follow its own rules and regulations, creating the instant situation
17 where the securities are not actually backed by any mortgages at all. Under the
18 standard model, the promissory notes were supposed to be sold and transferred into a
19 trust pool (“Securitized Trust”) that holds the promissory notes as collateral on the
20 securities bought by investors (“Certificate holders”). These “true sales” allow the
21 original lenders to move the notes off the books, eliminating the need to maintain
22 capital adequacy reserves against default. The purpose of securitizing collateral debt
23 obligations was to provide a large supply of money to lenders for originating loans, and
24 to provide investment to bond holders – which were expected to be relatively safe.

25 13. The Securitized Trusts, if ever formed properly, are subject to and
26 governed by (1) the Pooling and Servicing Agreement; (2) The Mortgage and Loan
27 Agreement; (3) the 424B5 Prospectus; (4) the common law trust rules of Delaware or
28 New York, depending on its origin, and (5) Internal Revenue Code section 860A

1 through 860G, better known as the Real Estate Mortgage Investment Conduit
2 (“REMIC”) rules.

3 14. An essential aspect of the mortgage securitization process is that the Trust
4 must obtain and maintain good title to the mortgage loans comprising the pool for that
5 certificate offering. This is necessary in order for the Trustee of the purportedly
6 Securitized Trust to be legally entitled to enforce the mortgage loans in case of default.
7 In addition to other required documentation to complete the Collateral File of any
8 given loan, two documents relating to each mortgage loan must be validly transferred
9 to the Trust as part of the securitization process – the promissory note and the security
10 instrument (deed of trust or mortgage). In this case, on information and belief, neither
11 document was validly transferred.

12 15. Here, Plaintiff alleges that the “true sales” never took place due to the
13 failure to follow the basic legal requirements for the transfer of a negotiable instrument
14 and Defendants did not acquire any legal, equitable, and pecuniary interest in
15 Plaintiffs’ Note and Deed of Trust. As a result thereof Defendants, which purports to
16 be Plaintiffs’ creditor actually have no secured or unsecured right, title, or interest in
17 Plaintiffs’ Note, Mortgage Deed of Trust and Residence, and have no right to collect
18 mortgage payments, demand mortgage payments, or report derogatorily against
19 Plaintiffs’ credit, or conduct any sort of ‘non-judicial’ foreclosure sale of Plaintiffs’
20 property.

21 16. Plaintiff alleges that the Defendants have not now, nor have they ever,
22 owned any right, title, or interest in the Plaintiffs’ Note, Deed of Trust, or property.

23 17. Plaintiff further allege that, on information and belief that Defendants will
24 claim they own Plaintiffs’ Note and Deed of Trust has been dissolved due to the
25 disbursement and receipt of mortgage insurance payouts to Defendants.

26 18. Even if the Note and Deed of Trust were actually transferred away from
27 the original lender, which Plaintiff asserts they were not, as a result of these mortgage
28 insurance payouts OCWEN has been paid in full on Plaintiffs’ debt obligation, if any.

1 19. Nonetheless, Defendants attempt to take advantage of the complex
2 structured financial system to defraud yet another homeowner. Plaintiff anticipates
3 that Defendants will seek a Court-sanctioned bailout by submitting blatantly fraudulent
4 and fabricated “assignment” via a Request for Judicial Notice, thereby committing a
5 fraud on the Court, and attempting to further mislead Plaintiff and the Court into
6 believing OCWEN is an actual creditor, and entitled to enforce the underlying
7 obligation, when in fact they have no such standing.

8 20. Plaintiff does not dispute that money is owed money on the mortgage
9 obligation.¹ Rather, Plaintiff disputes the amount owed, and seeks the Court’s
10 assistance in determining who the holder in due course is of the Note and Deed of
11 Trust, and specifically what rights, if any, Defendants have to claim a secured or
12 unsecured interest in Plaintiffs’ Note, Deed of Trust and Property in the face of
13 overwhelming evidence that OCWEN is not the true holder of Plaintiffs’ financial
14 obligation.

15 21. Plaintiffs’ information and belief is based on (1) a title report and analysis of
16 the Property’s county records; (2) direct written and oral communication with
17 Defendants; (3) Plaintiffs’ research, experience, and extensive review of depositions,
18 case law, amicus briefs, correspondence, news articles, reports, and publicly available
19 securitization documents and practices; (4) a review of the purported “Assignment of
20 Deed of Trust”; 5) and an audit of multiple filings with the Securities and Exchange
21 Commission (“SEC”), including multiple prospectus and Pooling and Servicing
22 Agreements (“PSA”), including the PSA , if any.

23 22. On or about October 10, 2006, Plaintiff purchased the home and obtained a
24 loan evidenced by a Trust Deed and Note through FIRST GUARANTY FINANCIAL
25 CORPORATION, who is alleged to be the predecessor to OCWEN.

26
27 ¹ However, simply because Plaintiff do not dispute This fact, the Court should not condone OCWEN
28 ’s fraudulent and predatory mortgage servicing practices and allow it to collect on money it is not owed.
Simply put, the Court should not allow OCWEN to trample over 200 years of well-settled property laws
just because Plaintiff “owes somebody the money.”

1 23. On or about October 10, 2006, the Plaintiffs executed a Deed of Trust in
2 favor of FIRST GUARANTY FINANCIAL CORPORATION. COMMONWEALTH
3 LAND TITLE COMPANY was named on the Deed of Trust as the “Trustee” and
4 Mortgage Electronic Registration Systems (MERS) was named “Nominee of the
5 Lender” and well as “beneficiary.”

6 24. Plaintiff alleges, believes, and thereon alleges that on or around the time of
7 origination of Plaintiffs’ loan, FIRST GUARANTY FINANCIAL CORPORATION
8 attempted to securitize and/or sell their loan to another entity or entities. That entity
9 was *not* OCWEN.

10 25. Plaintiff alleges on information and belief that FIRST GUARANTY
11 FINANCIAL CORPORATION never sold, transferred, or granted the Note or
12 Mortgage to Defendant, and that Defendant is merely a third-party stranger to the loan
13 transaction. Furthermore, Plaintiff alleges that none of the Defendants or Doe
14 Defendants can demonstrate or document that Plaintiffs’ Note was ever properly
15 endorsed, and transferred to Defendants or any other claimed predecessor in interest to
16 FIRST GUARANTY FINANCIAL CORPORATION. In fact, Plaintiff has requested
17 that Defendants verify the validity of the debt. Although this information should be
18 readily available to any mortgage servicer (and in fact, several documents recorded by
19 or on behalf of the Defendants attest that said information is in possession of the filing
20 declarant) Defendants have failed to provide any evidence to verify the owner and
21 amount of Plaintiffs’ Mortgage or validate the claim to Plaintiffs’ debt obligation.

22 26. The parties involved in the alleged Securitization and attempted transfer of
23 Plaintiffs’ Note and Mortgage failed to adhere to section 2.01 of the related PSA which
24 requires that Plaintiffs’ Note and Mortgage be properly endorsed, transferred, accepted,
25 and deposited with the Securitization Trust (or its custodian) on or before the “closing
26 date” indicated on the Prospectus. The “closing date” is the date by which all of the
27 Notes and Mortgages must be transferred, if ever. The failure to do so results in the
28 Note and Deed of Trust not being part of the Mortgage Loan Trust res, such that it is

1 not a loan that OCWEN, as trustee, can attempt to collect.

2 27. Plaintiffs allege that no recorded assignment of the original Deed of Trust
3 was executed before the closing date of the trust, and in fact the first fraudulent
4 “assignment” that attempted to transfer any interest in the debt was recorded on June
5 December 12, 2011 – four years after the closing date of any Security Mortgage Loan
6 Trust, and said assignment was fraudulently executed by someone who completely
7 lacked the authority to do so. The lack of a timely or valid actual assignment of the
8 Note and Deed of trust into the trust res the Security Mortgage Loan Trust raises
9 numerous red flags and further demonstrates that Plaintiffs’ Note and Deed of Trust
10 were not properly or actually deposited into the Security Mortgage Loan Trust by the
11 closing date, and that the lack of an actual assignment further demonstrates fatal
12 securitization defects such that FIRST GUARANTY FINANCIAL CORPORATION
13 remained the Plaintiffs’ creditor, and no interest was created in favor of Defendants.
14 The transfer further violated the Bankruptcy Code, in that the transfer took place after
15 Plaintiff had filed a Chapter 7 Bankruptcy proceeding without first seeking a relief
16 from stay.

17 28. The failure to deposit Plaintiffs’ Note into the Mortgage Loan Trust before
18 the closing date is a violation of the PSA and of New York trust law. Consequently,
19 OCWEN, neither individually nor as trustee any Security Mortgage Loan Trust can
20 claim any legal or equitable right, title, or interest in Plaintiffs’ Note, Mortgage, Deed
21 of Trust or Property since Defendants cannot take any action which is not authorized
22 by the Securitization agreements that created and govern the trust.

23 29. Plaintiffs do not allege or assert that they are a beneficiary or party to the
24 PSA. Rather, Plaintiffs allege that the failure to securitize the Note makes it
25 impossible for Defendants to claim, allege or assert that it was assigned, transferred or
26 granted Plaintiffs’ Note or Deed of Trust, or any interest therein, in any manner
27 whatsoever. Plaintiffs also allege that the failure to securitize the Note and Mortgage
28 has resulted in an unperfected lien that Defendants cannot enforce in any manner

1 whatsoever, and that only its true successor has any interest therein.

2 30. Plaintiff relied on the misrepresentations of Defendants and have been
3 damaged in the following ways: (1) multiple parties may seek to enforce the debt
4 obligation against him; (2) the title to their home has been clouded and rendered
5 unmarketable, as any would-be buyer of Plaintiffs' home will find themselves in legal
6 limbo, unable to know with any certainty whether they can safely buy Plaintiffs' home
7 or get title insurance given the potential of competing claims between Defendants and
8 or a successor or assign; (3) Plaintiffs have been paying the wrong party for an
9 undetermined amount of time and overpaid in interest that was over calculated; (4)
10 they are unable to determine whether they sent their monthly mortgage payments to the
11 right party since there are potentially competing claims as between multiple creditors;
12 (5) they have expended significant funds to cover the cost of litigation and related costs.

13 31. In addition to seeking compensatory consequential, punitive, and other
14 damages, Plaintiff seeks Declaratory Relief as to whether the Deed of Trust (Mortgage)
15 secures any obligation of Plaintiff in favor Defendants such that any of them can
16 collect Plaintiffs' mortgage payments, demand payment, engage in debt collection
17 activities, or conduct a valid non-judicial foreclosure sale of the property to the
18 exclusion of the true beneficial owner.

19 THE ROLE OF MERS IN SECURITIZATION AND ITS EFFECT ON THE CHAIN
20 OF TITLE TO PLAINTIFFS' HOME

21 32. Mortgage Electronic Registration Systems, Inc. ("MERS") is a private
22 corporation that administers the MERS System, a national electronic registry that
23 purports to track the transfer of ownership interests and servicing rights in mortgage
24 loans, including Plaintiffs' loan. In 1993, the MERS system was created by several
25 large participants in the real estate mortgage industry to track ownership interests in
26 residential mortgages Mortgage lenders and other entities, known as MERS members,
27 subscribe to the MERS system, pay annual fees for the electronic processing, and
28 tracking of ownership and transfers of mortgages. Members contractually agree to

1 appoint MERS as their common agent on all mortgages they register in the MERS
2 system. In essence, MERS privatized the mortgage recording system, creating a
3 situation wherein a borrower can no longer go to the Office of the County Recorder
4 and determine who their lender actually is at any given point in time.

5 33. MERS is listed as grantee in the official records maintained at county
6 register of deeds offices. The lenders were supposed to retain the interest in the
7 promissory notes, as well as the servicing rights to the mortgages, not MERS.

8 34. Plaintiff alleges that MERS did not affect assignment, transfer, negotiation,
9 or sale of their Note and Mortgage to any Defendant or Doe Defendant.

10 35. The operative document defining MERS and its rights and functions is the
11 Deed of Trust (“Deed of Trust” or “Trust Deed”). The Trust Deed conveys a security
12 interest and power of sale in the real estate to the Lender, not Chicago Title and not
13 MERS.

14 36. Because MERS is merely an electronic registration system and not a true
15 pecuniary beneficiary it did not and could not grant, assign or transfer any true or
16 pecuniary beneficial interest in Plaintiffs’ Note and Mortgage to any of the Defendants.
17 The Plaintiff anticipate that the Defendant’s will produce a recorded “Assignment of
18 Deed of Trust” of the Deed of trust, Dated December 12, 2011 and/or some other
19 fraudulent documentation supportive of its claimed ownership interest.

20 37. As will be shown below, and contrary to the recitations contained in the
21 “Assignment” purportedly executed on December 12, 2011, MERS did not receive any
22 valuable consideration for Plaintiffs’ Note and Mortgage, and in fact, the “assignment”
23 was a false document that was fraudulently executed on behalf of a stranger to the
24 record. Contrary to the recitations contained in the “Assignment”: (1) MERS did not
25 receive any value or consideration for Plaintiffs’ Note Deed of Trust, (2) MERS did
26 not “grant, assign, or transfer” any interest in Plaintiff Note and Mortgage; and (3) the
27 purported signor was not the “Assistant Secretary” for MERS or other corporate
28 officer for MERS and lacked the requisite corporate and legal authority to effect an

1 actual “assignment” of Plaintiffs’ Note and Deed of Trust (assuming that MERS had
2 any legal, equitable, or pecuniary interest in Plaintiffs’ Note and Mortgage, which
3 Plaintiff claims it did not).

4 38. Defendants then purported recorded “Assignment of Deed of Trust” of the
5 Deed of trust, dated December 12, 2011 and/or some other fraudulent documentation
6 supportive of its claimed ownership interest. As will also be shown , and contrary to
7 the recitations contained in the “Assignment” purportedly executed on December 11,
8 2011, MERS did not receive any valuable consideration for Plaintiffs’ Note and
9 Mortgage, and in fact, this “assignment”, like the first “assignment” was a false
10 document that was fraudulently executed on behalf of a stranger to the record. Contrary
11 to the recitations contained in the “Assignment”: (1) MERS did not receive any value
12 or consideration for Plaintiffs’ Note Deed of Trust, (2) MERS did not “grant, assign, or
13 transfer” any interest in Plaintiff Note and Mortgage; and (3) the purported signatory
14 was not the “Assistant Secretary” for MERS or other corporate officer for MERS and
15 lacked the requisite corporate and legal authority to effect an actual “assignment” of
16 Plaintiffs’ Note and Deed of Trust (assuming that MERS had any legal, equitable, or
17 pecuniary interest in Plaintiffs’ Note and Mortgage, which Plaintiff claims it did not).
18 Also, MERS had lost its authority and right to “assign” or in any way transfer the deed
19 of trust by the purported “assignment” on December 12, 2011.

20 39. In the unlikely event that the “assignments” and “substitutions” purportedly
21 undertaken by or on behalf of the Defendants were effective and authorized by MERS
22 (a fact that Plaintiff disputes), as will be shown below, such actions would themselves
23 cause the Note and Deed of Trust to be “split”, rendering both unsecured and
24 unenforceable.

25 40. MERS’s own membership rules directly prohibit MERS from ever claiming
26 ownership of any mortgages or negotiable instruments, including Plaintiffs’. A
27 successor-in-interest to the beneficial interest in the Trust Deed may choose to engage
28 MERS as its agent by execution of a subsequent agreement, but MERS and its

1 members cannot force MERS upon all future purchasers simply by claiming such
 2 authority in the original deed of trust. In fact, in a September 2009 deposition, former
 3 President of MERS, R.K. Arnold admitted that MERS does not have a beneficial
 4 interest in any mortgage, that it does not loan money, and that it does not suffer a
 5 default if a borrower fails to repay a mortgage loan. Therefore, MERS does not own
 6 Plaintiffs' Note and Deed of Trust, and did not and could not "grant, assign, or
 7 transfer" any interest therein to Defendants at any relevant time.

8 41. As will be fully discussed below, the claimed purported "assignment" on
 9 December 12, 2011, of Plaintiffs' Note and Mortgage create a fraudulent lien claim
 10 and is in direct contravention of the laws and customs of California.

11 42. Therefore, based on the foregoing, MERS could not and did not, *in fact*,
 12 assign any interest to OCWEN and/or the related trust such that Defendants can
 13 demand mortgage payments or report Plaintiffs' payments as late, or undertake any
 14 action permitted under the Deed of Trust, including conducting a non-judicial
 15 foreclosure sale as fraudulently scheduled for July 3, 2013.

16 NO SUBSTITUTION OF TRUSTEE CONVEYED LEGAL AUTHORITY TO
 17 ANYONE TO ACT AS THE SUBSTITUTED TRUSTEE

18 43. The Deed of Trust names COMMONWEALTH LAND TITLE COMPANY
 19 as Trustee.

20 44. Plaintiff alleges that no such transfer ever occurred and that the signor is not
 21 and was not the "Assistant Secretary" for MERS.

22 45. Provision 24 of the Deed of Trust governs the Substitution of Trustee. It
 23 provides in relevant part:

24 "Lender, at its option, may from time to time appoint a successor trustee
 25 to any Trustee appointed hereunder by an instrument **executed and**
 26 **acknowledged by Lender**.....This procedure for substitution of trustee
 27 shall govern to the exclusion of all other provisions for substitution."
 28 (Emphasis added.)

1 46. In violation of Provision 24 of the Deed of Trust, and Cal. Civ. Code section
2 2934(a), the lender failed to file a valid Substitution of Trustee. Plaintiffs allege that
3 the Notice of Trustee Sale and Notice of Default were filed by “T. D. SERVICES
4 COMPANY” rather than COMMONWEALTH LAND TITLE COMPANY as set forth
5 in all of the relevant mortgage documents.

6 47. Defendants, through their agent, T. D. SERVICES COMPANY, recorded a
7 fraudulent Substitution of Trustee/ OR FAILED TO RECORD SUCH DOCUMENT
8 claiming that as the present beneficiary, MERS desired to substitute in T. D.
9 SERVICES COMPANY as the trustee. Plaintiff alleges that no such substitution
10 occurred due to the failure of the actual LENDER, as required in Provision 24 and Cal.
11 Civ. Code section 2934(a) to effect the purported substitution.

12 48. Plaintiff further alleges that signor is simply an individual who simply signs
13 thousands of property record documents without any legal or corporate authority
14 whatsoever.

15 49. Signor is not and was not an “Assistant Secretary” for MERS and in fact,
16 the Substitution was fraudulently signed without the actual lenders, knowledge or
17 authorization.

18 50. At all relevant times, Signor was a full time employee of T. D. SERVICES
19 COMPANY, and was not an is not an “Assistant Secretary” of MERS.

20 51. Even if MERS had any rights with respect to the Note and Deed of Trust
21 (which Plaintiff denies) signor was never in any manner whatsoever appointed as an
22 “Assistant Secretary” by MERS, and thus giving her no corporate or legal authority, or
23 the lender’s successors and assigns, to execute the purported Substitution. This was an
24 intentional act undertaken by OCWEN and done knowingly with the specific intent
25 that the consequences of their actions be brought to fruition, which they have as
26 evidenced by the instant debt collection activities.

27 52. The “Substitution” filed is a fraudulent document, and the execution, filing,
28 and recordation of the document was created for the Purposes of facilitating and aiding

1 and abetting the illegal, deceptive and unlawful collection and attempts to collect on
2 Plaintiff obligation which is actually owned by a non-defendant.

3 53. Attempting to “substitute” T. D. SERVICES COMPANY under said Deed
4 of Trust, as Defendants did here, does not allow defendants to act as the trustee under
5 the Deed of Trust since they had no demonstrable right to execute any “substitution” or
6 “assignment” related thereto.

7 **OCWEN HAS NO INTEREST IN THE NOTE AND DEED OF TRUST**

8 54. In addition, the Defendants on December 12, 2011, falsely and fraudulently
9 caused “assignment” of the Deed of Trust to be attempted.

10 55. On December 12, 2011, by way of an employee of T. D. SERVICES
11 COMPANY falsely and fraudulently executed an “Assignment of Deed of Trust”
12 falsely and fraudulently affirming that he/she was an “Assistant Secretary” of
13 “Mortgage Electronic Registration Systems” and purporting to affirm receipt of “Good
14 and Valuable Consideration” in exchange for an “assignment” of the Deed of Trust in
15 favor of OCWEN.

16 56. Plaintiff alleges that the signor is an individual who simply signs thousands
17 of property record documents without any legal or corporate authority whatsoever. In
18 point of fact, at the time signor signed the “Assignment” he/she was not then nor ever
19 the “Assistant Secretary” for MERS.

20 57. At the time the “Assignment” was signed by signor he/she executed a
21 document pretending to be an “Assistant Secretary” of MERS and with such pretense
22 purportedly assigned the Deed of Trust to a client of her employer, on behalf of
23 OCWEN.

24 58. The above referenced “Assignment” was fraudulently executed without the
25 knowledge or authorization of Defendants.

26 59. Signor was never, in any manner whatsoever, appointed as the “Assistant
27 Secretary” by the Board of Directors of MERS, as required by MERS’s corporate by-
28 laws and an adopted resolution by the Board of Directors of MERS, or its actual

1 successors. For that reason, Signor never had, nor has, any corporate or legal authority
2 from Defendants, or the lender's successors and assigns, to execute the purported
3 "Assignment." This was an intentional act undertaken by OCWEN done knowingly
4 with the specific intent that the consequences of their actions be brought to fruition,
5 which they evidenced by the instant debt collection activities and attempts to strip the
6 ownership and possession of Plaintiffs' property.

7 60. The "Assignment" is fraudulent lien claim, and the execution, filing and
8 recordation of the documents was created for the purpose of facilitating and aiding and
9 abetting the illegal, deceptive, and unlawful collection of Plaintiffs' mortgage
10 payments, as well as engaging in other debt collection activities, including scheduling a
11 "Trustee's Sale" of the property without the authority to do so.

12 61. Since the Note and Mortgage were not timely or properly assigned to
13 OCWEN, some unknown entity remained the beneficial owner of the Note and
14 Mortgage.

15 62. Plaintiff further alleges that, in the unlikely event Defendants have any
16 interest therein, any amount allegedly owed under the Note is subject to equitable
17 offset by the actual, consequential, special, and punitive damages owed to Plaintiff by
18 the Defendants, which amount is currently unknown, but will be determined upon
19 conducting discovery. Plaintiff believes this amount will be in excess of the amount of
20 their obligation.

21 63. Attempting, through a series of fraudulent acts, to "assign" or transfer a
22 Deed of Trust to itself, as Defendants did here, does not allow enforcement of
23 Plaintiffs' Note and Mortgage to the exclusion of the true beneficial owner. As alleged
24 herein, Plaintiffs' Note was not properly negotiated, endorsed, and transferred to
25 Defendants who now seek to collect mortgage payments and/or engage in other
26 unlawful collection practices including an unlawful non-judicial foreclosure of the
27 Plaintiffs' property.

28 64. Defendants further REFUSED to enter into a "Loan Modification" with

1 Plaintiff GREG SHULL as the sole responsible party for the loan which had been
2 entered into by Plaintiff.

3 65. California Commercial Code section 3301 limits a negotiable instrument's
4 enforcement to the following:

5 "Person entitled to enforce" an Instrument means (a) the holder of the
6 instrument, (b) a nonholder in possession of the instrument who has the
7 rights of a holder, or © a person not in possession of the instrument who is
8 entitled to enforce the instrument pursuant to Section 3309 or subdivision
9 (d) of Section 3418. A person may be a person entitled to enforce the
10 instrument even though the person is not the owner of the instrument or is
11 in wrongful possession of the instrument.

12 66. On information and belief, none of the Defendants were or are present
13 holders in due course of Plaintiffs' Note such that they can enforce Plaintiffs'
14 obligation and demand mortgage payments or undertake any activities permitted under
15 the relevant Deed of Trust including the collection of moneys or the exercise of rights
16 under the Deed of Trust including the power of sale.

17 67. On information and belief, Defendants were not, and are not, a nonholder in
18 Possession of Plaintiffs' Note who has rights of the holder.

19 68. If there is a holder in due course of Plaintiffs' Note at issue, pursuant to
20 California Commercial Code section 3301, et seq. and/or the PSA, it is the entity that
21 can actually establish a Pecuniary, legal, and equitable interest in the Property, and
22 provide an unbroken chain of title to Plaintiff Note and Mortgage.

23 69. On information and belief none of the Defendants, were/are entitled to
24 enforce Plaintiffs' Note pursuant to § 3309 or subdivision (d) of § 3418.

25 70. Plaintiff allege that, prior to demanding mortgage payments from Plaintiff
26 none of the Defendants or Doe Defendants had, nor presently have, a secured or
27 unsecured legal, equitable, or pecuniary interest in Plaintiffs' Note and/or Deed of
28 Trust as required under California law - irrespective of who is actually in physical

1 possession of Plaintiffs' Note.

2 71. Plaintiff alleges that, on information and belief, Defendants and/or its
3 agents are fraudulently enforcing a debt obligation in which they have no pecuniary
4 equitable or legal interest. Thus, Defendants's conduct is part of a fraudulent debt
5 collection scheme to the detriment of the Plaintiff.

6 IN THE UNLIKELY EVENT MERS DID IN FACT AUTHORIZE THE
7 ASSIGNMENTS AND SUBSTITUTIONS OF THE DEED OF TRUST, SUCH
8 ACTIONS WOULD SEPARATE THE NOTE FROM THE DEED OF TRUST AND
9 RENDER THEM BOTH UNENFORCEABLE.

10 72. The function of the Deed of Trust was described in the document as follows:
11 "This Security Instrument secured to Lender: (I) the repayment of the Loan and all
12 renewals, extensions and modifications of the Note; and (ii) the performance of
13 Borrower's covenants and agreements under this Security Instrument and the Note."

14 73. The limited capacity and function of MERS was explained in the Deed of
15 Trust as follows:

16
17 "Borrower understands and agrees that MERS holds only legal title to the
18 interests granted by Borrower in this Security Instrument, but, if necessary to
19 comply with law or custom, MERS (as nominee for Lender and Lender's
20 successors and assigns) has the right: to exercise any or all of those interests,
21 including, but not limited to, the right to foreclose and sell the Property; and to
22 take any action required of Lender including, but not limited to, releasing and
23 canceling this Security Instrument."

24 74. The Note signed by the Plaintiff made no mention to MERS. In the event the
25 "assignments" executed by the Defendants for their own benefit were in fact authorized
26 by MERS, a fact that the Plaintiff disputes, as set forth above, the "assignment" sought
27 to assign both the Note and Deed of Trust to the Defendants. However, MERS did not
28 own the note, thus it could not assign the note, and its assignment of the Deed of Trust

1 to the Defendants separate from the note was of no force or effect.

2 75. MERS is not the payee of the note and MERS never held the Note; therefore
3 the language in the “assignment” of the Deed of Trust, purporting to transfer the
4 promissory note is ineffective. Simply being a beneficiary or having an assignment of
5 the deed of trust is not enough to be entitled to foreclose on a Deed of Trust. For there
6 to be a valid assignment for the purposes of foreclosure both the Note and the Deed of
7 Trust must be assigned.

8 76. An “assignment” of the Deed of Trust separate from the note has no “force.”
9 MERS never held the promissory note, thus its assignment of the Deed of Trust to the
10 Defendants separate from the note had no force. MERS had no separate agency
11 contract regarding the loan, and therefore the December 12, 2011 assignment was
12 invalid.

13 77. If the holder of the Deed of Trust does not own or hold the note, the deed of
14 trust serves no purpose, is impotent, and cannot be a vehicle for depriving the grantor
15 of the Deed of Trust of ownership of the property described in the deed of trust. The
16 sole purpose of the deed of trust is to secure the payment of the note.

17 78. The very sole purpose of the deed of trust is to secure payment of the note.

18 79. The very, and sole, purpose of a foreclosure sale pursuant to the Deed of
19 Trust is to obtain funds for payment of the Note.

20 80. If the holder of the Deed of Trust does not own or hold the note, and there
21 were to be a foreclosure sale pursuant to the Deed of Trust, there is no assurance that
22 the proceeds of the foreclosure would be used for the purpose intended by the Deed of
23 Trust, i.e., to be applied as payment of, or on, the Note. That is not to say that the
24 owner or holder of the note cannot arrange for an agent or nominee, acting on its
25 behalf, to conduct a foreclosure for the benefit of the owner or holder of the Note. But
26 that is quite a different proposition from assertions that the holder of a Deed of Trust
27 who does not own or hold the note has the power to transfer the note from the original
28 Note holder to another and that an entity that does not own or hold the Note can

1 conduct a foreclosure under the Deed of Trust.

2 81. The fact that the Note and Deed of Trust would now be “split” renders both
3 unsecured, and gives rise to the potential of multiple claimants under the Note and
4 Deed of Trust.

5 **DEFENDANTS DEBT COLLECTION EFFORTS**

6 82. Plaintiff are informed, and believe and thereon alleges that in spite of
7 having no legitimate, demonstrable, and/or documented interest in the subject
8 Mortgage Note the defendants through its agents and employees, has undertaken
9 multiple and ongoing overt acts to obtain moneys and ultimately title to Plaintiffs’
10 property from the Plaintiff related to the Defendant’s false claim of ownership of the
11 Mortgage Note, including but not limited to:

- 12 a. Mailing monthly billing statements to the Plaintiff asserting a right to
13 collect mortgage payments. (The names and identities of those individuals
14 who have sent payment requests to the Plaintiff are unknown to the
15 Plaintiff at this time, and discovery is necessary to properly identify same.
16 Leave of the Court will be made to request an opportunity to file an
17 amended complaint that fully and completely identifies the ongoing overt
18 acts in this regard, as well as the identity of the Defendants employee or
19 agent who authored the payment demands.) Payments in this regard total
20 exceed \$75,000.00.

21 83. On December 17, 2012, Defendants caused to be recorded and sent to the
22 Plaintiff by and someone acting in the purported capacity as an “Agent for
23 Beneficiary” sent a “Notice of Default and Election to Sell Under Deed of Trust”
24 whereby Defendants demand the payment of the Note by the Plaintiff. In exchange
25 for the payment demanded, the Defendants would agree to abandon their stated intent
26 to take the Plaintiffs’ property by way of non-judicial foreclosure based on the
27 defendant’s Defendants false and fraudulent claim of entitlement to payments under
28 the Mortgage Note the Plaintiff had executed.

1 84. The December, 2012 “Notice of Default.”, as well as all prior and
2 subsequent “notices” sent to the Plaintiff by or on behalf of the Defendants failed to
3 comply with Section 22 of the Deed of Trust that provides said notice “shall inform the
4 Borrower of....the right to bring a court action to assert the non-existence of a default
5 or any other defense of Borrower to acceleration and sale.”

6 85. A “Notice of Sale” was signed by an agent of OCWEN employed by T. D.
7 SERVICES COMPANY signing as “Authorized Agent.”

8 86. The “Notice of Sale” was signed by an agent of OCWEN employed by T.
9 D. SERVICES COMPANY falsely signing as “Trustee.”

10 87. The names and identities of those all the individuals who have sent payment
11 demands to the Plaintiff are unknown to the Plaintiff at this time, and discovery is
12 necessary to properly identify same. Leave of the Court will be made to request an
13 opportunity to file an amended complaint that fully and completely identifies the
14 ongoing overt acts in this regard, as well as the identity of the employee or agent who
15 authored the payment demands.)

16 **PLAINTIFF HAS SUFFERED AND CONTINUES TO SUFFER, SIGNIFICANT**
17 **MONETARY, LEGAL AND EQUITABLE DAMAGES**

18 88. The conduct described above by Defendants and their respective agents and
19 employees, was malicious because Defendants knew that they were not acting on
20 behalf of the current pecuniary beneficiary of the Note and Deed of Trust. However,
21 despite such knowledge, said Defendants continued to demand and attempt to collect
22 Plaintiffs’ mortgage payments.

23 89. Defendants engaged, and are engaging in, a pattern and practice of
24 defrauding Plaintiff, in that, on information and belief, during perhaps the entire life of
25 the mortgage loan, Defendants failed to properly credit payments made, incorrectly
26 calculated interest on the accounts, and failed to accurately debit fees, as these
27 payments belonged to the true beneficiary of the Note and Deed of Trust.

28 90. On information and belief, at all times material Defendants had, and has,

1 actual knowledge that Plaintiffs' accounts were not accurate, but that Plaintiff would
2 continue to make further payments based on Defendants' inaccurate accounts.

3 91. On information and belief, Plaintiff made payments based on the
4 improper, inaccurate, and fraudulent representations as to Plaintiffs' accounts.

5 92. As a direct and proximate result of the actions of the Defendants, set forth
6 above, Plaintiff overpaid in interest.

7 93. As a direct and proximate result of the actions of the Defendants set forth
8 above, Plaintiffs' credit and credit score have been severely damaged. Specifically
9 because of the derogatory credit reporting on their credit report on behalf of
10 Defendants, and others, Plaintiff is unable to refinance out of their present loan, buy
11 another property, or sell their home.

12 94. As a direct and proximate result of the actions of the Defendants set forth
13 above, the title to Plaintiffs' home has been slandered, clouded, and has been rendered
14 unmarketable.

15 95. As a direct and proximate result of the actions of the Defendants set forth
16 above, Plaintiff does not know who the current beneficiary of their Note and Mortgage
17 actually is, such that he is now subject to double financial jeopardy.

18 96. As a direct and proximate result of the actions of the Defendants set forth
19 above, *multiple* parties can attempt to enforce Plaintiffs' debt obligation.

20 97. The conduct of Defendants, and one or more of the Doe defendants has led
21 to the imminent loss of Plaintiffs' home and to pecuniary damages. The pecuniary
22 damages include, but are not limited to, the costs of over calculation and overpayment
23 of interest, the costs of repairing Plaintiffs' credit, the reduction and/or elimination of
24 Plaintiffs' credit limits, the costs associated with removing the cloud from their
25 property title and attorneys' fees, in an amount to be proven at trial.

26 98. The conduct of Defendants, and one or more of the Doe Defendants'
27 conduct, was malicious because Defendants did not know the identity of the current
28 and true beneficiary of Plaintiffs' note and Deed of Trust, yet they intentionally and

1 fraudulently covered up this defect by wrongfully recording multiple fraudulent
2 Assignments and Substitutions of Trustee and other documents, which would enable
3 them to *illegally and fraudulently* collect on Plaintiffs' debt, undertake a fraudulent
4 "Trustee's Sale," and consequently rendered the title to the property unmarketable.

5 99. The title to Plaintiffs' Property has been rendered unmarketable and
6 unsalable because of the multiple claims being made against Plaintiffs' debt and
7 underlying security (the "Subject Property"). If the Assignments of the Deed of Trust,
8 together with the Substitutions, and the "Trustee's Deed upon Sale" are not cancelled
9 and set aside, together with all other documents recorded and identified herein,
10 Plaintiff will be incurably prejudiced. Plaintiff will be denied the opportunity to
11 identify and negotiate with their *true creditor* and exercise their right to verify and
12 validate their debt.

13 100. Plaintiff has offered to and is ready, willing, and able to unconditionally
14 tender their obligation.

15 101. Plaintiffs' property was lost in foreclosure, and the issues that Plaintiff is
16 raising are relative to the funding and note holder.

17 102. That the notices and pending foreclosure have failed to conform with the
18 provisions of California Civil Code Sections 1624, 2923.5, 2932.5 et seq., and
19 Commercial Code section 3302 et seq.

20 103. Plaintiff further alleges that California Civil Code section 2924 et seq. and
21 its subparts are being applied to Plaintiff in a manner that is unlawful, because at least
22 in part the party acting as the Trustee was not in possession of the original Note, that
23 the Note when it was assigned to OCWEN, the assignment by FIRST GUARANTY
24 FINANCIAL CORPORATION and its assigns, did not convey the power of sale
25 because it violated the terms of California Civil Code section 2932.5, that the
26 assignment, when it was made, that the Note executed by Plaintiff was no longer a
27 negotiable instrument because the assignment was not physically applied to the Note
28 pursuant to the holding of *Pribus v. Bush*, (1981) 118 Cal.App.3d 1003, 173 Cal.Rptr.

1 747, although there was sufficient room on the back of the Note to complete the
2 assignment, and as such the planned foreclosure of Plaintiffs' subject property does not
3 conform with the strict mandates of Civil Code section 2924. 76.

4 104. The Gravamen of Plaintiff's complaint is that Defendants violated State
5 laws which were specifically enacted to protect the public from such abusive,
6 deceptive, and unfair conduct by Defendants, and that Defendants cannot legally
7 enforce a non-judicial foreclosure.

8 105. Plaintiff is a "debtor" as defined by the Rosenthal Act, *California Civil*
9 *Code 1788.2(h)*.

10 106. Defendants are engaged in the collection of debts from consumers using
11 the mail and telephone.

12 107. Defendants regularly attempt to collect consumer debts alleged to be due to
13 another.

14 108. Defendants are "debt collectors" as defined by the Rosenthal Act,
15 *California Civil Code §1788.2©*.

16 109. The purported debt which Defendants attempted to collect from Plaintiff
17 was a "consumer debt" as defined by the Rosenthal Act, *California Civil Code*
18 *§1788.2(f)*.

19 110. The final stage of a foreclosure proceeding is a sale of the Subject Property
20 through a public auction at which the current beneficial owner of the right to foreclose
21 is the only lawful party who can provide instructions to the trustee on the amount of
22 money to accept at the sale or to "credit bid" up to the amount owed on the loan. In
23 fact, none of the Securitizers, or any of their authorized agents, who have played a part
24 in the non-judicial foreclosure proceedings were entitled to receive payment from the
25 loan proceeds, or title to or possession of the Subject Properties, or to give instructions
26 to any trustee on the deed of trust. The making of the assertion in the foreclosure
27 proceedings that the beneficiary was entitled to foreclose and the NODs and trustee
28 sale based on amounts not properly owing is an act of fraud or deceit within the

1 meaning of Cal. Civ. Code §2924h.

2 111. The intent to securitize, the fraudulent acts and omissions involved in the
3 origination, transfers of the Subject Loans, and securitization of the Subject Loans,
4 were concealed from Plaintiff.

5 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF; TO DETERMINE**
6 **STATUS OF DEFENDANT’S CLAIMS [28 U.S.C. § 2201, 2202]**

7 112. Plaintiff hereby incorporates by reference each and every one of the
8 preceding paragraphs as if the same were fully set forth herein.

9 113. Section 2201(a) of Title 28 of the United States Code states:

10 In a case of actual controversy within its jurisdiction, except with
11 respect to Federal taxes other than the actions brought under section
12 7428 of the Internal Revenue Code of 1986, a proceeding under
13 section 505 or 1146 of title 11, or in any civil action involving an
14 antidumping or countervailing duty proceeding regarding a class or
15 kind of merchandise of a free trade area country (as defined in
16 section 516A(f)(10) of the Tariff Act of 1930), as determined by the
17 administering authority, any court of the United States, upon the
18 filing of an appropriate pleading, may declare the rights and other
19 legal relations of any interested party seeking such declaration,
20 whether or not further relief is or could be sought. Any such
21 declaration shall have the force and effect of a final judgment or
22 decree and shall be reviewable as such.

23 114. Section 2202 of Title 28 of the United States Code states:

24 Further necessary or proper relief based on a declaratory
25 judgment or decree may be granted, after reasonable notice and
26 hearing, against any adverse party whose rights have been
27 determined by such judgment.
28

1
2 115. Plaintiff alleges that Defendants do not have a secured or unsecured
3 legal, equitable, or pecuniary interest in the lien evidenced by the Deed of Trust and
4 that its purported assignment or substitution has no value since the Deed of Trust is
5 wholly unsecured. In the unlikely event the assignment or substitutions were properly
6 executed, the assignment would also render the Note and Deed of Trust to be
7 unsecured, such that irrespective of the validity of the assignments, the Deed of Trust is
8 wholly unsecured.

9 116. At some time after December 17, 2007, Defendants claim they have a
10 secured enforceable interest in, and perfected lien against, the Plaintiffs' Note, Deed of
11 Trust and Property.

12 117. Thus, the competing allegations made by Plaintiff above establish that a
13 real and actual controversy exists as to the respective rights of the parties to this matter,
14 including ownership of the Property, and the competing rights of potential putative
15 creditors.

16 118. Accordingly, Plaintiff request the Court make a finding and issue
17 appropriate orders stating that Defendants, have no right or interest in Plaintiffs' Note,
18 Deed of Trust, or the Property which authorizes them, in fact or as a matter of law, to
19 collect Plaintiffs' mortgage payments or enforce the terms of the Note or Deed of Trust
20 in any manner whatsoever, including exercise of the "power of sale."

21 119. Plaintiff will suffer prejudice if the Court does not determine the rights
22 and obligations of the parties because: (1) Plaintiff will be denied the opportunity to
23 identify and document their true and correct creditor/lender and negotiate with them;
24 (2) Plaintiff will be denied the right to conduct discovery and have the claims of
25 Defendants, verified by a custodian of records who has personal knowledge of the loan
26 and all transactions related to it; (3) Plaintiff will be denied the opportunity to discover
27 the true amount they still owe minus any illegal costs, fees and charges and (4) and
28

1 Plaintiff will ultimately be stripped of their proprietary interest in the property by a
2 entity with no standing to undertake said action.

3 120. Due to the actual case and controversy regarding competing claims and
4 allegations, it is necessary that the Court declare the actual rights and obligations of the
5 parties and make a determination as to whether the claims of Defendants are
6 enforceable and whether they is secured by any right, title or interest in Plaintiffs'
7 Property.

8 121. Furthermore, the conduct of Defendants, and each of them, as herein
9 described, was so malicious and contemptible that it would be looked down upon and
10 despised by ordinary people. Plaintiff is therefore entitled to punitive damages in an
11 amount appropriate to punish Defendants and to deter others from engaging in similar
12 conduct.

13 **SECOND CAUSE OF ACTION – NEGLIGENCE**

14 122. Plaintiff hereby incorporates by reference each and every one of the
15 preceding paragraphs as if the same were fully set forth herein.

16 123. Defendants, and Does 1 through 10, are jointly and severally liable for
17 their negligent and reckless conduct.

18 124. Defendants, as the purported beneficiaries of the Note and Deed of Trust,
19 as purported mortgage services, together with its agents and employees, including its
20 purported “trustees” has a duty to exercise reasonable care¹ and skill to follow
21 California law with regard to enforcement of monetary obligations, and to refrain from
22 taking or failing to take any action against Plaintiff that they did not have the legal
23 authority to do. This includes not collecting or demanding mortgage payments when
24 they do not have the right to enforce the obligation, causing the Plaintiff to overpay in

25 ¹ Normally, lenders and servicers do not owe a duty of care. *Nymark v. Heart Fed Savings and Loan*
26 *Assn.*, 231 Cal. App. 3d 1089, 1093 (1991). However, a bank may be liable in negligence if it fails to
27 discharge its contractual duties with reasonable care. *Das v. Bank of Am.*, 186 Cal. App. 4th 727, 741
28 (2010). Additionally, a bank may be liable for aiding and abetting a tort when it renders “substantial
assistance” to a tortfeasor during a business transaction that it knowingly aided in the commission of
the tort. *Id.* (citing *Casey v. U.S. Bank Nat. Assn.*, 127 Cal. App. 4th 1138, 1144-45).

1 interest, making derogatory credit reports to credit bureaus, and failing to keep an
2 accurate accounting of Plaintiffs' mortgage payments, credits, and debits (if MERS is
3 in fact the legally authorized mortgage servicer for Plaintiff, which Plaintiff deny).

4 125. Defendants have a duty to exercise reasonable care and skill to refrain
5 from taking any action against Plaintiff that they do not have the legal authority to do.
6 As a direct and proximate result of the reckless negligence, utter carelessness, and
7 blatant fraud of the Defendants as set forth above, the Chain of Title to Plaintiffs'
8 Property has been rendered unmarketable and fatally defective and has caused Plaintiff
9 to lose saleable title to the subject property, and title to the property.

10 126. Defendants breached that duty when they failed to follow the guidelines
11 established in the PSA requiring the transfer of the Note and Deed of Trust into the
12 subject trust by the requisite closing date.

13 127. As a direct and proximate result of the negligence and carelessness of the
14 Defendants as set forth above, Plaintiff suffered, and continues to suffer, general and
15 special damages in an amount to be determined at trial, including attorney's fees, and
16 costs of bringing suit to dispute, validate, and challenge said Defendants' purported
17 rights to enforce the debt obligations against them.

18 **THIRD CAUSE OF ACTION – QUASI CONTRACT**

19 128. Plaintiff hereby incorporates by reference each and every one of the
20 preceding paragraphs as if the same were fully set forth herein.

21 129. Defendants, and others acting in concert with them for the pecuniary
22 benefit of OCWEN, demanded monthly mortgage payments from Plaintiff and
23 continued to collect payments from Plaintiff. Plaintiff reasonably relied upon
24 Defendants' assertion that it/they are/were entitled to the benefit of Plaintiffs'
25 mortgage payments.

26 130. Defendants, and others acting in concert with them, knowingly accepted
27 payments and retained them for its own use knowing Defendants had not acquired and
28 never did acquire an interest in Plaintiffs' Note, such that they could accept or keep

1 Plaintiffs' payments. It would be inequitable for Defendants to retain the payments it
2 received from Plaintiff that it did not have the legal authority to collect. The equitable
3 remedy of restitution when unjust enrichment has occurred is an obligation created by
4 the law without regard to the intention of the parties, and is designed to restore the
5 aggrieved party to their former position by return of the thing or its equivalent in
6 money.

7 131. Section 23 of the Deed of Trust states that: "Upon payment of all sums
8 secured by this Security Instrument, Lender shall request Trustee to reconvey the
9 Property and shall surrender this Security Instrument and all notes evidencing debt
10 secured by this Security Instrument to Trustee. Trustee shall reconvey the Property
11 without warranty to the person or persons legally entitled to it." The obligations to
12 FIRST GUARANTY FINANCIAL CORPORATION under the Deed of Trust were
13 fulfilled when FIRST GUARANTY FINANCIAL CORPORATION received the
14 balance on the Note as proceeds of sale of Plaintiffs' Note and Deed of Trust to a
15 presently unknown entity, who on information and belief was NOT OCWEN, who has
16 been unjustly enriched by collecting monthly payments from Plaintiff when it has no
17 interest in their Note or Deed of Trust.

18 132. Plaintiff seeks restitution for any payments made to OCWEN including
19 those payments made to others acting in concert with Defendants for its benefit that
20 were not actually paid to the lender or beneficiary, if any.

21 **FOURTH CAUSE OF ACTION- VIOLATION OF 15 U.S.C. § 1692, ET SEQ.**

22 133. Plaintiff hereby incorporates by reference each and every one of the
23 preceding paragraphs as if the same were fully set forth herein.

24 134. Federal law prohibits the use of "any false, deceptive, or misleading
25 representation or means in connection with the collection of any debt . . . including the
26 false representation of . . . the character, amount, or legal status of any debt . . . and the
27 threat to take any action that cannot legally be taken..."
28

1 135. In illegally attempting to collect on Plaintiffs' debt obligation in the
2 manner described herein, Defendants, as the purported assignee as purported mortgage
3 servicer:

- 4 a. Falsely represented the status of the debt, in particular, that it was due and
5 owing to Defendants at the time the suit was filed;
- 6 b. Falsely representing or implied that the debt was owing to Defendants as
7 an innocent purchaser for value, when in fact, such an assignment had not
8 been accomplished;
- 9 c. Threatened to take action, namely engaging in collection activities that
10 cannot legally be taken by them;
- 11 d. Did in fact take action, namely by recording a fraudulent "Assignment" of
12 Deed of Trust, a fraudulent notice of "Default," and a fraudulent notice of
13 "Trustee's Sale", when such action cannot legally be taken by them; and
- 14 e. Attempted to collect on the promissory note under false pretenses; namely
15 that Defendants were assigned Plaintiffs' debt when in fact they were not.

16 136. The conduct described above, and more fully in the body of this complaint,
17 is in violation of 15 U.S.C. § 1692, et seq and therefore the Plaintiff is entitled to any
18 and all damages, rights, and remedies provided therein.

19 137. Plaintiff hereby incorporates by reference each and every one of the
20 preceding paragraphs as if the same were fully set forth herein.

21 138. Defendants' conduct, for the reasons stated herein, is in direct violation of
22 12 U.S.C. § 2605(e), et seq.

23 139. Defendants' conduct, for the reasons stated herein, is in direct violation of
24 Cal. Penal Code Section 532(f)(a)(4).

25 140. California Business and Professions Code section 17200, et seq., prohibits
26 acts of unfair competition, which means and includes any unlawful, unfair or
27 fraudulent business act and conduct that is likely to deceive and is fraudulent in nature.
28

1 141. As more fully described above, Defendants' acts and practices are
2 unlawful, unfair, and fraudulent. This conduct is ongoing and continues to date.

3 142. Defendants engage in unfair, unlawful, and fraudulent business practices
4 with respect to mortgage loan servicing and related matters by, among other things:

- 5 a. Executing and recording false and misleading documents;
- 6 b. Executing and recording documents without the legal authority to do so;
- 7 c. Failing to disclose the principal for which documents were being executed
8 and recorded in violation of Cal. Civ. Code section 1095;
- 9 d. Demanding and accepting payments for debts that were non-existent;
- 10 e. Violating the Security First Rule;
- 11 f. Reporting payments as late to credit bureaus without the legal right or
12 authority to do so;
- 13 g. Acting as a beneficiary without the legal authority to do so;
- 14 h. Conducting a "Trustee's Sale" of the subject property without the legal
15 authority to do so; and
- 16 i. Other deceptive practices as described herein.

17 143. As more fully described above, Defendants' acts and practices are likely to
18 deceive members of the public.

19 144. As more fully described above, Defendants acts and practices are unfair
20 and the harm cause by the conduct outweighs any benefits that the conduct may have.

21 145. Plaintiff alleges that by engaging in the above described acts and/or
22 practices as alleged herein Defendants violate several laws including Cal. Bus. and
23 Prof. Code section 17200, et seq. and must be required to disgorge all profits related to
24 their unfair, unlawful, and deceptive business practices.

25 146. Plaintiff alleges that Defendants' misconduct, as alleged herein, gave
26 Defendants an unfair competitive advantage over their competitors. The scheme
27 implemented by Defendants is designed to defraud California consumers and enrich
28 the Defendants.

147. The foregoing acts and practices have caused substantial harm to California consumers, including Plaintiff.

148. By reason of the foregoing, Defendants have been unjustly enriched and should be required to make restitution to Plaintiff and other California consumers who have been harmed, and/or be enjoined from continuing in such practices pursuant to Cal. Bus. Code sections 17203 and 17204.

149. As a direct and proximate result of the actions of Defendants, and each of them, stated above, Plaintiff has been injured in that a cloud has been placed upon title to Plaintiffs' Property and Defendants have failed to remove this cloud from Plaintiffs' title.

150. Plaintiff is entitled to an order compelling OCWEN, and any other defendants claiming an interest in and to the Property to take any and all actions necessary to remove the cloud they have placed upon their title and an order enjoining such Defendants from taking such action in the future.

SIXTH CAUSE OF ACTION – ACCOUNTING

151. Plaintiff hereby incorporates by reference each and every one of the preceding paragraphs as if the same were fully set forth herein.

152. OCWEN has held itself out to be Plaintiffs' creditor as Plaintiffs' mortgage servicer. As a result of this purported relationship with Plaintiff, said Defendants have a fiduciary duty to Plaintiff to properly account for payments made by Plaintiff.¹

153. As a result of the aforementioned fraudulent conduct, Plaintiff paid OCWEN, and other agents and employees of OCWEN, mortgage payments for a period of many years. However, for the reasons stated herein, none of the money was

¹ To state of cause of action for accounting, a plaintiff must allege the existence of a fiduciary relationship, or accounts so complicated that an ordinary legal action demanding a fixed sum is impractical. 5 Within, Cal. Proc. 4th (1997) Pleading, section 775, p. 233. The elements for a claim for accounting are: 1) fiduciary relationship or other circumstances appropriate to the remedy; and 2) a balance due from the defendant to Plaintiff that can only be ascertained by an accounting. See Within, California Procedure, Pleadings, section 776, p 233 (4th ed.).

1 actually owed to Defendants. For that reason, these moneys are due to be returned to
2 the Plaintiff in full.

3 154. The exact amount of money due from Defendants to Plaintiff is unknown
4 to Plaintiff and cannot be ascertained without an accounting of the receipts and
5 disbursements of the aforementioned transactions. Plaintiff is informed, believes, and
6 thereon alleges that the amount due to them exceeds \$75,000.00.

7 **SEVENTH CAUSE OF ACTION – EXTORTION 18 U.S.C. § 1951(b)(2).**

8 155. Plaintiff hereby incorporates by reference each and every one of the
9 preceding paragraphs as if the same were fully set forth herein.

10 156. The Plaintiff is informed, and believe and thereon allege that in spite of
11 having no legitimate, demonstrable, and/or documented interest in the Mortgage Note
12 and Deed of Trust, the defendant OCWEN, by itself and through its agents and
13 employees, has, as described above, undertaken multiple and ongoing overt acts to
14 obtain moneys from the Plaintiff related to the Defendant OCWEN's false claim of
15 ownership of subject mortgage note and deed of trust in violation of 18 U.S.C. §
16 1951(b)(2).

17 157. As more fully described above, the Defendant, OCWEN though its
18 agents and employees, and Doe Defendants have caused to be delivered and
19 communicated to the Plaintiff extensive writings and telephone calls falsely asserting a
20 right to collect payments on behalf of the Defendant OCWEN under a false claim of a
21 right to payments due under the subject Mortgage Note and Deed of Trust, as well as
22 the filing and recording of multiple notices, assignments, and Deeds with the County
23 Recorder designed to wrongfully threaten the Plaintiff with dispossession of their
24 family home absent voluntary payments as demanded by and on behalf of the
25 Defendants.

26 158. The Plaintiff is informed, and believes and thereon alleges that the
27 conduct herein described was initiated by or on behalf of the Defendant OCWEN and
28 the co-defendants named herein, and its agents and/or employees, and served to

1 threaten the Plaintiff with loss of their property through the use of California's non-
2 judicial foreclosure statutes absent receipt of the payments falsely demanded by or on
3 behalf of the Defendant OCWEN. The Plaintiff is informed, and believes and thereon
4 alleges that at no time was the Defendant OCWEN entitled to receive the payments
5 demanded and received.

6 159. The Plaintiff is informed, and believes and thereon alleges that the
7 Defendant OCWEN, and its co-defendants, knows Defendant OCWEN has no right to
8 seek or demand any payments under the subject Mortgage note.

9 160. Based on the threats and demands initiated by or on behalf of the
10 Defendant OCWEN, and others, the Plaintiff has paid the Defendant OCWEN ,
11 directly and by way of the co-defendants named herein and others, in excess of
12 \$75,000.00, which the Plaintiff is informed, and believes and thereon alleges has been
13 wrongfully demanded and received by or on behalf of the Defendant OCWEN based
14 on a false claim of ownership of the subject Mortgage Note and Deed of Trust. Said
15 demands were made inclusive of a direct and real threat of use of the non-judicial
16 foreclosure process to force the Plaintiff to voluntarily make the payments as
17 demanded or risk a non-judicial foreclosure, which the Plaintiff would be powerless to
18 prevent given the status of California law, and in fact did take place on June 11, 2012
19 as threatened.

20 161. The exact amount of money due from Defendants to Plaintiff is
21 unknown to Plaintiff and cannot be ascertained without an accounting of the receipts
22 and disbursements of the aforementioned transactions as demanded in the sixth cause
23 of action. Plaintiff is informed and believes and thereon alleges that the amount due
24 exceeds \$75,000.00.

25 162. The act of foreclosure on Plaintiffs' property, by definition, would
26 cause the Plaintiff to be dispossessed of both their ownership and possessory interest in
27 the subject property, and would result, if ultimately successful, in the Plaintiffs'
28 forcible eviction from their property by operation of law.

163. As a proximate result of the Defendants threats to deprive the Plaintiff of their property absent voluntary tender of the moneys demanded, which payments the Plaintiff is informed, and believes and thereon alleges were fraudulently demanded and received by the Defendants, the Plaintiff has tendered the sum of no less than \$75,000.00 to the Defendants, by reason of which the Plaintiff has been damaged in the sum of no less than \$75,000.00.

164. The Plaintiff is informed, and believes and thereon alleges that the aforementioned conduct of the Defendants was an intentional act designed to extort moneys from the Plaintiff under a threat of use of the California non-judicial foreclosure statutes designed to deprive the Plaintiff of their property in violation of 18 U.S.C. §1951(b)(2) which was despicable conduct that subjected the Plaintiff to a cruel and unjust hardship in conscious disregard of the Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

WHEREFORE, Plaintiff prays as follows:

- (a) For compensatory, special and general damages in an amount according to proof at trial, but not less than \$5,000,000, against Defendants OCWEN, and DOES 1 through 10 inclusive;
- (b) For punitive and exemplary damages in an amount to be determined by the Court against all Defendants OCWEN, and DOES 1 through 10 inclusive;
- (c) For an order compelling Defendants OCWEN, and DOES 1 through 10 inclusive to remove any instrument which does not or could be construed as constituting a cloud upon Plaintiffs' title to the Property, including any purported Assignment of Deed of Trust, and other document filed with the County Recorder relative to the subject property;
- (d) For an order finding that Defendants OCWEN, and DOES 1 through 10 inclusive have no legally cognizable rights as to Plaintiff, the Property, Plaintiffs' Promissory Note, Plaintiffs' Deed of trust or any other matter based on contract or any of the documents prepared by Defendants OCWEN and DOES 1 through 10 inclusive, tendered to and executed by Plaintiff;

- 1 (e) For the Court to issue an order restraining Defendants OCWEN, and
2 DOES 1 through 10 inclusive, their agents, or employees from continuing or
3 initiating any action against the Property and enjoining Defendants, their
4 agents or employees from doing so during the pendency of this matter;
5 (f) For an order compelling Defendants OCWEN, and DOES 1 through 10
6 inclusive to disgorge all amounts wrongfully taken by them from Plaintiff
7 and returning same to Plaintiffs' interest thereon at the statutory rate from the
8 date the funds were first received from Plaintiff;
9 (g) For a Declaration of Rights and Obligations as between the Plaintiff and all
10 Defendants with respect to the Note, Mortgage and Deed of Trust that is the
11 subject of this complaint;
12 (h) For costs of suit incurred herein;
13 (i) For reasonable attorney fees incurred, and
14 (j) For such other and further relief as the Court may deem proper.

15
16 Dated: July 1, 2013

/s/ Joseph La Costa

Joseph La Costa
Attorney for Plaintiff

VERIFICATION

I am the Plaintiff in the above entitled action and I have read the foregoing Complaint for Damages, Injunctive Relief, Declaratory Relief and know the contents thereof. The same are true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7/1/2013


GREGORY SHULL

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GREG O. SHULL

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Joseph La Costa, SBN 108443
7840 Mission Center Court, Suite 104, San Diego, CA 92108
Telephone 1-619-922-5287

DEFENDANTS

OCWEN FINANCIAL SERVICES SRL, LLC, a Florida Corporation,
doing business as T. D. SERVICES COMPANY, and DOES 1 TO 10

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'13CV1545 GPC RBB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28:1345

Brief description of cause:
Fraud and declaratory relief.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE /

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/01/2013

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE